

Adult and Senior Care Update

Summer 2009

This is an Interim Summer edition of the *Adult and Senior Care Update* for 2009. Our goal is to inform you that new Adult Residential Facility (ARF) Age Regulations will be going into effect August 30, 2009. We will continue to address relevant issues in the Community Care Licensing Division (CCLD) Adult and Senior Care Program in our next regular *Update*. In the meantime, we encourage your feedback. We hope you will share this *Update* with members of your organization as well as with others interested in adult and senior care issues.

UPDATE ON ARF AGE REGULATIONS

At the time of the last *Update*, the Office of Administrative Law (OAL) was in the process of reviewing the new ARF Age Regulations. The regulations have now been approved by OAL and sent to the Secretary of State's Office; and, as noted above, become effective August 30, 2009. This *Update* includes the new regulations, with explanations following each section. Both the previous and the new provisions are included at the end of this *Update*.

BACKGROUND AND PURPOSE OF NEW ARF AGE REGULATIONS

Beginning August 30, 2009, the new ARF Age Regulations allow an ARF to both retain *and admit* a person 60 years of age or older without obtaining an exception, subject to census limitations. The regulations also specify other provisions related to the care of persons 60 years of age or older in ARFs. Prior to August 30, 2009, an ARF could *retain* clients over 59 years of age, subject to census limitations; however, an ARF always had to obtain an exception in order to *admit* such a client.

NEW ARF AGE REGULATION SECTION AMENDMENTS

Following is the new and revised language in the amended sections of the ARF Age Regulations, with explanations following each section:

Section 80001(a)(5) (Definitions) (General Licensing Requirements)

- “(a) (5) ‘Adult Residential Facility’ means any facility of any capacity that provides 24-hour-a-day nonmedical care and supervision to the following:

“(A) persons 18 years of age through 59 years of age; and

“(B) persons 60 years of age and older only in accordance with Section 85068.4.”

EXPLANATION: Following is the explanation for Section 80001(a)(5):

- This section means that an ARF may care for persons 60 years of age or older if the criteria of Section 85068.4 are met. In general, these criteria will help ensure the compatibility and the health and safety of all of the clients residing in an ARF.
- The use of the term “60 years of age or older” is consistent with the definition of an “elderly person” in the regulations for residential care facilities for the elderly (RCFE). Previously, the definition of an ARF did not specify any age ranges, and stated that ARFs provided care to “adults except elderly persons.”

Section 85068.4(a) (Acceptance and Retention Limitations)

“(a) [The licensee shall not accept or retain the following:]. . .

“(3) Persons who have needs that are in conflict with the needs of other clients or the program of services offered. . . .”

EXPLANATION: This section remains the same, with minor editing changes made for grammatical correctness.

Section 85068.4(b)

“(b) The licensee may admit or retain persons who are 60 years of age or older whose needs are compatible with those of other clients if they require the same level of care and supervision as the other clients in the facility and the licensee is able to meet their needs.”

EXPLANATION: Following is the explanation for Section 85068.4(b):

- The basic change to this section is that ARFs are now allowed to admit—the words “shall not admit” were deleted—persons 60 years of age or older without an exception as long as the requirements of Section 85068.4 are met. This is the most important change that the new ARF Age Regulations make.
- With the adoption of the new ARF Age Regulations, an exception to admit a person 60 years of age or older would only be required when admitting the person would mean exceeding the census limitations in Section 85068.4(g). Please see the explanation for (g) below.

- Prior to the adoption of the new ARF Age Regulations, an ARF could *retain* clients over 59 years of age, subject to census limitations; however, an ARF always had to obtain an exception in order to *admit* such a client to the facility.
- Census limitations have always been in the ARF age regulations.

Section 85068.4(c)

“(c) When a licensee admits or retains any person 60 years of age or older, the licensee shall ensure that all of the following information is contained in the person's file:”

EXPLANATION: Section 85068.4(c) clarifies that certain information, as described below, must be in a person's file in order for a licensee of an ARF to admit or retain any person 60 years of age or older. The consolidation of this information into the person's file helps ensure that the licensee and other appropriate parties, including the licensing agency, have easy access to documentation that provides information on the person's functional capabilities and medical, mental health and social/emotional needs.

“(1) Completed Functional Capabilities Assessment, required by Section 80069.2.”

EXPLANATION: The Functional Capabilities Assessment may be used to assist in identifying any age-related needs the person may have, which must be addressed in the Needs and Services Plan.

“(2) Completed Needs and Services Plan, required by Section 85068.2. If one or more age-related care needs are identified by the provider or the referring source, the licensee shall ensure that the Needs and Services Plan specifies how such need(s) will be addressed.”

EXPLANATION: For a person 60 years of age or older, the Needs and Services Plan must include how the licensee plans to address any of the person's age-related needs. This will help ensure that the person receives appropriate care in the ARF.

“(3) Documentation of a medical assessment, signed by a physician, made within the last year.”

EXPLANATION: Following is the explanation for (c)(3):

- When a person 60 years of age or older is initially being admitted to or retained in an ARF, it is acceptable for his or her medical assessment to

meet either ARF or residential care facility for the elderly (RCFE) requirements (see Regulation Section 80069 and RCFE Regulation Sections 87458(b) and (c)).

- Subsequent medical assessments for a client 60 years of age or older must meet RCFE requirements, per Regulation Section 85068.4(e).
- ARF medical assessments may be, but are not required to be, documented on the LIC 602 (10/99), Physician's Report for Community Care Facilities. The LIC 602 is available on the CCLD website at <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/LIC602.PDF>.
- RCFE medical assessments may be, but are not required to be, documented on the LIC 602A (12/04), Physician's Report for Residential Care Facilities for the Elderly. The LIC 602A is available on the CCLD website at <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/LIC602A.pdf>.

Please also see the explanation under Section 85068.4(e).

- “(4) A letter of support from the person's conservator with placement authority, if applicable.”

EXPLANATION: This letter, if applicable, will document the wishes of the person's conservator with regard to the person's placement in the ARF. The licensing agency will take into account the wishes of the current or prospective conservator and the person, when feasible.

- “(5) Letters of support, if any, from the person's placement officer, social worker, and/or mental health professional, if applicable, documenting that the Adult Residential Facility is the most appropriate setting for the person.”

EXPLANATION: Letters of support from placement officers, social workers, and/or mental health professionals are generally optional, but may be requested by licensing staff if necessary to make an informed decision regarding an exception request.

Section 85068.4(d)

- “(d) The licensee shall ensure that the Needs and Services Plan for each client 60 years of age or older is updated at least annually and in accordance with Section 85068.3.”

EXPLANATION: Following is the explanation for Section 85068.4(d):

- These are not new requirements. Section 80068.3 already requires each client's Needs and Services Plan to be updated at least annually. The requirement is repeated in this section for clarity and as a safeguard.
- Clients 60 years of age or older are generally at higher risk for experiencing declines in physical health and cognitive/emotional/social functioning than are the younger clients that an ARF traditionally serves. An updated Needs and Services Plan will help ensure that any age-related needs of the client are appropriately addressed on an ongoing basis.

Section 85068.4(e)

“(e) The licensee shall ensure that the medical assessment for each client 60 years of age or older is updated at least annually and in accordance with the regulations addressing medical assessments in Residential Care Facilities for the Elderly (RCFE) [California Code of Regulations, Title 22, Sections 87458(b) and (c)].”

EXPLANATION: Following is the explanation for Section 85068.4(e):

- The requirement that the medical assessment for each client 60 years of age or older be updated at least annually is new, and has been added to the regulations as a safeguard. (Medical assessments for all other clients of ARFs only need to be updated when required by the licensing agency, per existing regulations.)
- The additional new requirement that the medical assessment for each client 60 years of age or older be updated in accordance with the RCFE regulations is also a safeguard. The RCFE regulations are more geared to identifying concerns and conditions associated with the aging process.
- The above new requirements will help ensure that clients 60 years of age or older receive appropriate medical care on a timely basis. This is particularly important because clients 60 years of age or older are generally at higher risk of developing health problems than are the younger clients that an ARF traditionally serves.
- Again, RCFE medical assessments may be, but are not required to be, documented on the LIC 602A (12/04), Physician's Report for Residential Care Facilities for the Elderly. The LIC 602A is available on the CCLD website at <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/LIC602A.pdf>.

Section 85068.4(f)

“(f) The Department may require the licensee to comply with various regulations applicable to RCFEs if the Department determines that compliance with any such specific regulations is necessary to protect the health and safety of clients 60 years of age or older. Such regulations may include, but not be limited to, those pertaining to the training of staff members who assist clients with personal activities of daily living; the regular observation of clients for changes in physical, mental, emotional, and social functioning; and the notification of the client's physician and responsible person and/or authorized representative, if any, of documented changes.”

EXPLANATION: Following is the explanation for Section 85068.4(f):

- This section gives the CDSS the authority to require the licensee of an ARF to comply with various regulations applicable to RCFEs *if necessary to protect the health and safety of clients 60 years of age or older.*
- An ARF would be required to comply with such an RCFE regulation *only after the CDSS had made a case-by-case determination that such compliance was necessary, based on the specific needs of a senior individual(s) living in a facility.* Examples of such RCFE regulations include those relating to documentation of observations of the person (client) and staff training on the care of the elderly.
- An ARF would be notified ahead of time by the licensing agency of the need to comply with an RCFE regulation.

Section 85068.4(g)

“(g) If acceptance or retention of an individual 60 years of age or older would result in the number of persons 60 years of age or older exceeding 50 percent of the census in facilities with a capacity of six or fewer clients, or 25 percent of the census in facilities with a capacity over six, the licensee must request an exception in order to accept or retain the individual. The exception request must be made in accordance with Section 80024. The documentation specified in Section 85068.4(c) must be submitted with the exception request.”

EXPLANATION: Following is the explanation for Section 85068.4(g):

- The census limitations above are not new. They have always been in the ARF age regulations.

- The requirement that all exception requests be made in accordance with Section 80024, Waivers and Exceptions, is not new either. Licensees requesting an exception (or a waiver) always have to follow Section 80024. However, the reference to Section 80024 is included in this section for clarity and ease of reference.
- The new requirement in this section is that licensees must submit the specific documentation required in Section 85068.4(c) along with an age exception request, as part of the substantiating documentation required in Section 80024(c)(1). In summary, the documentation required in Section 85068.4(c) is:
 - Completed Functional Capabilities Assessment
 - Completed Needs and Services Plan
 - Medical Assessment
 - Letter(s) of support from the person's conservator, if applicable
 - Other letters of support (placement officer, social worker and/or mental health professional), if any and if applicable

Section 85068.4(h)

“(h)” Retention of all clients shall be in accordance with each client's Needs and Services Plan, required by Section 85068.2 and the criteria specified in Section 80092, Restricted Health Conditions.”

EXPLANATION: This section remains essentially the same, with editing changes to add emphasis on “all” and “each” only.

SUMMARY

If you have questions about this *Update* or suggestions for future topics, please contact Gary Levenson-Palmer, Chief of the Technical Assistance and Policy Branch, at (916) 324-4312. Please visit our website at www.cclld.ca.gov for copies of *Updates*, office locations, provider letters, regulations, or to learn more about licensing services. Statistical information on the number and type of facilities licensed by CCLD are updated monthly and available on our website at <http://cclld.ca.gov/PG833.htm>.

Sincerely,

Original signed by Jeffrey Hiratsuka

JEFFREY HIRATSUKA
Deputy Director
Community Care Licensing Division

Attachment (amendments)

ATTACHMENT

ADULT RESIDENTIAL FACILITY (ARF) AGE REGULATIONS

(effective August 30, 2009)

Note: Cross-outs represent deleted language, and underlining represents new language.

Amend Section 80001 to read:

80001 DEFINITIONS

80001

(a) (Continued)

(5) "Adult Residential Facility" means any facility of any capacity ~~which that~~ provides 24-hour-a-day nonmedical care and supervision to ~~adults except elderly persons.~~ the following:

(A) persons 18 years of age through 59 years of age; and

(B) persons 60 years of age and older only in accordance with Section 85068.4.

(6) (Continued)

Authority Cited: Sections 1502, 1522.41(j); 1524(e), 1530, and 1530.9, Health and Safety Code.

Reference: Sections 1501, 1502, 1502(a)(7) and (8), 1502.5, 1503, 1503.5, 1505, 1507, 1508, 1509, 1511, 1520, 1522, 1524, 1524(e), 1525, 1525.5, 1526, 1527, 1530, 1530.5, 1531, 1531.1, 1533, 1534, 1536.1, 1537, 1538.5, 1550, 1551, 1556, 1569.699(a), 1797.196, and 11834.11, Health and Safety Code; Sections 5453, 5458, 11006.9, and 17736(a) and (b), Welfare and Institutions Code; ~~and~~ 29 CFR 1910.1030; Settlement Agreement of October 27, 2008 between the California Association of Mental Health Patients' Rights Advocates and the California Department of Social Services in *California Association of Mental Health Patients' Rights Advocates v. Cliff Allenby, et al.*, Santa Clara County Superior Court, No. 106-CV061397, filed November 9, 2006.

Amend Section 85068.4 to read:

85068.4 ACCEPTANCE AND RETENTION LIMITATIONS

85068.4

- (a) [The licensee shall not accept or retain the following:] . . . (Continued)
- (3) Persons who have needs ~~which~~ that are in conflict with the needs of other clients or the program of services offered. (Continued)
- (b) The licensee ~~shall not~~ may admit, ~~but may~~ or retain, persons who are ~~over 59~~ 60 years of age or older whose needs are compatible with those of other clients; if they require the same level of care and supervision as ~~do~~ the other clients in the facility; and the licensee is able to meet their needs.
- (1) ~~Licensees are not required to obtain an exception for clients over the age of 59 as long as the number of persons over the age of 59 does not exceed 50 percent of the census in facilities with the capacity of six and under.~~
- (2) ~~Licensees are not required to obtain an exception for clients over the age of 59 as long as the number of persons over the age of 59 does not exceed 25 percent of the census in facilities with a capacity of over six.~~
- (c) When a licensee admits or retains any person 60 years of age or older, the licensee shall ensure that all of the following information is contained in the person's file:
- (1) Completed Functional Capabilities Assessment, required by Section 80069.2.
- (2) Completed Needs and Services Plan, required by Section 85068.2. If one or more age-related care needs are identified by the provider or the referring source, the licensee shall ensure that the Needs and Services Plan specifies how such need(s) will be addressed.
- (3) Documentation of a medical assessment, signed by a physician, made within the last year.
- (4) A letter of support from the person's conservator with placement authority, if applicable.
- (5) Letters of support, if any, from the person's placement officer, social worker, and/or mental health professional, if applicable, documenting that the Adult Residential Facility is the most appropriate setting for the person.
- (d) The licensee shall ensure that the Needs and Services Plan for each client 60 years of age or older is updated at least annually and in accordance with Section 85068.3.
- (e) The licensee shall ensure that the medical assessment for each client 60 years of age or older is updated at least annually and in accordance with the regulations addressing medical assessments in Residential Care Facilities for the Elderly (RCFE) [California Code of Regulations, Title 22, Sections 87458(b) and (c)].

- (f) The Department may require the licensee to comply with various regulations applicable to RCFEs if the Department determines that compliance with any such specific regulations is necessary to protect the health and safety of clients 60 years of age or older. Such regulations may include, but not be limited to, those pertaining to the training of staff members who assist clients with personal activities of daily living; the regular observation of clients for changes in physical, mental, emotional, and social functioning; and the notification of the client's physician and responsible person and/or authorized representative, if any, of documented changes.
- (g) If acceptance or retention of an individual 60 years of age or older would result in the number of persons 60 years of age or older exceeding 50 percent of the census in facilities with a capacity of six or fewer clients, or 25 percent of the census in facilities with a capacity over six, the licensee must request an exception in order to accept or retain the individual. The exception request must be made in accordance with Section 80024. The documentation specified in Section 85068.4(c) must be submitted with the exception request.
- (eh) Retention of all clients shall be in accordance with ~~the~~ each client's Needs and Services Plan, required by Section 85068.2, and the criteria specified in Section 80092, Restricted Health Conditions.

Authority Cited: Section 1530, Health and Safety Code.

Reference: Sections 1501, 1507, and 1531, Health and Safety Code; Settlement Agreement of October 27, 2008 between the California Association of Mental Health Patients' Rights Advocates and the California Department of Social Services in *California Association of Mental Health Patients' Rights Advocates v. Cliff Allenby, et al.*, Santa Clara County Superior Court, No. 106-CV061397, filed November 9, 2006.